

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 30-93

SILVER BOW STATIONARY ENGINEERS)
LOCAL UNION NO. 375, I.U.O.E.,)
AFL-CIO,)

Complainant,)

vs.)

BUTTE-SILVER BOW GOVERNMENT,)

Defendant.)

FINDINGS OF FACT;

CONCLUSIONS OF LAW,

AND RECOMMENDED ORDER

* * * * *

I. INTRODUCTION:

A hearing was held in Butte, Montana on April 22, 1993, before Joseph V. Maronick, Hearing Officer. Parties present, duly sworn and offering testimony included Charles Davies, Union Business Manager; Patrick Fellows, James Gross and Jim Johnson. John Johnston, Attorney at Law, represented the Defendant. Exhibits admitted to the record were Claimant's Exhibits C1 through C18 and Defendant's Exhibits D1 through D18. Claimant Exhibits C1 and C15 were admitted over objection.

II. FINDINGS OF FACT:

1. On February 1, 1992, Butte-Silver Bow purchased the Butte Water Company and created the Water Utility Division of the Public Works Department of Butte-Silver Bow Government. Mr. James Gross had been employed by the Butte Water Company. He was and is a resident of Beaverhead County.

2. The Union, Silver Bow Stationary Engineers, Local 375, I.U.O.E. was aware of the Butte-Silver Bow Municipal Code, Section 2.08.010, providing:

1 From and after October 1, 1979, all employees
2 of the local government of Butte-Silver Bow
3 shall be bona fide residents within the
4 boundaries of Butte-Silver Bow during the
5 period of their employ by the government of
6 Butte-Silver Bow.

7 3. On at least two occasions the Union representative
8 inquired of the Defendant as to the application of the residency
9 requirement to Mr. Gross. He was advised that in the estimation of
10 Mr. Jim Johnston and Mr. Jim Clark, Personnel Director that the
11 residency requirement would be enforced.

12 4. The Union voted three to one in favor of a memorandum of
13 agreement (Exhibit D1) signed by the Union's representative and the
14 Defendant's representative on December 27, 1991. The agreement did
15 not provide any residency waiver for Mr. Gross.

16 5. On the suggestion of Mr. Jim Clark, Personnel Director,
17 (Exhibit D8) Mr. Gross on June 3, 1992 (Exhibit D10) wrote to the
18 County Commissioners asking exception from the residency
19 requirement. Mr. Gross had been given a memorandum of agreement
20 to consider (Exhibit C4). The agreement if entered provided
21 continued employment and temporary waiver of the residency
22 requirement if Mr. Gross moved into Butte-Silver Bow County on or
23 before June 1, 1993. Mr. Gross refused to sign the agreement
24 because of inaccuracies or objection to the language allegedly
25 contained in the agreement. Because of Mr. Gross's investment in
26 a residence outside of Butte-Silver Bow County and other reasons he
27 refused the agreement and continues to consider it inappropriate to
28 move into Butte-Silver Bow County on what he considers such short
time frames.

1 6. The Counsel of County Commissioners denied Mr. Gross's
2 request and in notification of June 11, 1993, (Exhibit D12) urged
3 him to sign the agreement. He was provide ten (10) days or longer
4 if necessary to respond. On June 24, 1992, (Exhibit D13) Mr. Gross
5 asked for additional time ending July 10, 1992, to respond. Two
6 requests for action were sent to Mr. Gross (Exhibit D14 and D15)
7 one dated June 25, 1992, and the next August 14, 1992. On
8 August 23, 1992, (Exhibit D15) Mr. Gross notified the Personnel
9 Director he would not sign the agreement. By letter of October 27,
10 1992, (Exhibit D17) Mr. Gross was notified that he must sign the
11 agreement or comply with the residency requirement within two weeks
12 or be terminated. Mr. Gross did not sign the agreement or comply
13 with residency requirement and therefore on November 12, 1992,
14 (Exhibit D18) he was terminated.

15 7. The Complainant contends that the Defendant waived the
16 residency requirements for Mr. Gross because nothing was said about
17 residency in the memorandum of agreement (Exhibit C6) and moreover
18 the initial list of continuing employees included Mr. Gross.
19 Additionally or in the alternative, the Complainant contends the
20 Defendant waived the residency requirement at least through June 1,
21 1993, as defined in the agreement Mr. Gross refused to sign.

22 III. DISCUSSION:

23 1. The record presented shows that the Complainant Union and
24 the Defendant discussed residency requirements throughout the
25 course of the negotiations for a new contract. The Defendant
26 regularly and without exceptions advised the Complainant that the
27 residency requirement would not be waived.

1 2. The position offered by the Complainant that the City at
2 anytime or in anyway waived the residency requirement is not
3 supported by the evidence presented. In every instance identified,
4 the Defendant advised the Complainant Union that the residency
5 required would not be waived. The County Commissioners refused
6 following request by Mr. Gross for waiver to grant the same.

7 3. The agreement offering temporary waiver of the residency
8 requirement was not accepted. Without acceptance none of the terms
9 of the proposed agreement are considered.

10 4. The Complainant carries the burden to show that the
11 Defendant engaged in an Unfair Labor Practice during the course of
12 the association between the Defendant and the County Government.
13 The record presented is insufficient to support such a conclusion.
14

15 IV. CONCLUSIONS OF LAW:

16 1. The Defendant, Butte-Silver Bow Government did not
17 violate Section 39-31-401(1) and 39-31-401(5) MCA.

18 V. RECOMMENDED ORDER:

19 IT IS ORDERED that Unfair Labor Practice Charge No. 39-93 be
20 dismissed.

21 Dated this 27 day of April, 1993.
22
23
24

25 Joseph V. Maronick

26 Joseph V. Maronick

27 Hearing Examiner
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